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U.S. DISTRICT COURT  
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## System Intended to Protect Children Under Fire for Overzealousness

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Fox News

An obese girl is yanked from her parents in Arizona. A New York couple loses custody of their son because they re drug him with Ritalin. A Colorado boy is stripped and examined by school officials because he said he'd been span morning. A Christian mother loses her daughter for teaching forgiveness.

### ADVERTISEMENT

Prudent precaution on the part of America's child protective services agencies or proof positive of a system run am

Cases like these are fueling what is becoming a growing backlash against state child protective services. It's a mov swelling as more and more examples surface of parents being snared in a system that critics say uses murky defin child abuse to dictate private family values, child-rearing methods, lifestyle choices, and even religious practices.

Overzealousness in efforts to protect children may seem an odd charge. But an expanding group of critics — from rights activists to doctors to social workers — claim a system designed to help children is spiraling out of control. A once criticized for not doing enough may now be doing too much, they say.

### Money Motives?

Activists lay part of the blame for what critics call a "frantic kidnapping frenzy" on the Adoption and Safe Families A 1997, legislation that rewards states with cash "bonuses" of \$4,000-\$6,000 per kid and other windfalls for each chil permanently adopted out of foster care.

EXHIBIT 1

The law was intended to prevent children from languishing in foster care. In addition to the bonuses, the ASFA also removed protections for parental rights and made getting families back together a priority. Under the new law, though, states have much more leeway in deciding whether their social workers made a "reasonable effort" to reunite a family.

The U.S. Department of Health and Human Services considers the ASFA a sparkling success.

The HHS' Lynn Henison says the bonuses were meant to apply only to adoption-eligible children already in the system. The money, she says, prods states into cutting through red tape and moving kids into permanent homes.

But how those kids wind up in the system in the first place is left to the individual states. It is this fact — and the motive — that has critics outraged.

"The people getting the money for the children should not be the same people deciding to take the children," said E. Dacus, president of the Pacific Justice Institute, a Sacramento, Calif., organization that provides legal support to cases involving parental rights, religious rights and civil liberties.

Nev Moore, founder of the Massachusetts-based Justice For Families, said states need a steady supply of adoption-eligible kids to keep the federal dollars flowing. In some states, social workers are even paid individual cash bonuses for each child they take into custody.

"Each child has a dollar value," she said.

Harry Spence, Massachusetts' new Department of Social Services (DSS) commissioner, dismisses such charges as "perverse and ludicrous," and said the critics making these allegations are putting kids at risk.

"If you think these kids haven't been harmed, then you think it's about money," Spence said. "They are wild and irresponsible charges," he said.

## Defining Abuse

In a high-profile case last summer in Ware, Mass., a one-day-old baby was taken from its mother. The alleged neglect: The mother was not holding the baby or the bottle correctly when she fed her newborn. A trial is set for March to decide if the mother, 27-year-old Diana Ross, will lose her parental rights.

Ross is currently fighting the state of Massachusetts for an older child also in foster care, and is suing the state because her third child died while in state custody. The state took Ross' older children because they were frequently found wandering alone outside. Because of her history, Massachusetts DSS required the hospital to file an abuse report even though the nurse filing the report noted that the hospital staff was unable to observe or establish any abuse or neglect.

There's no question that in many cases, like Ross', parents can come under state scrutiny for good reasons. But family activists say parents with a legitimate need for assistance from the state often wind up being branded abusers even when physical or sexual abuse is not alleged.

In 1999, according to the National Child Abuse and Neglect Reporting System, 49,000 children were placed in foster care based on "unsubstantiated" reports of abuse and neglect. Of the 900,000 substantiated cases of child abuse filed each year, almost 40 percent fall under a vague "other" category separate from physical or sexual abuse or serious neglect. The remaining 60 percent are mostly for neglect.

It is those "unsubstantiated" and "other" cases — almost 400,000 of them — that gall the likes of Nev Moore. "Child needs to be defined as a deliberate act with the intent to harm," she argues.

Activists say home schooling, devout religious practices, persistent diaper rash, scratches from a new pet puppy, or intolerance, cystic fibrosis, a broken home heating system, and messy housekeeping have all been documented not as abuse or neglect, but as the reason for taking a child into state custody.

Spanking, for example, is frequently the basis for abuse complaints filed by caseworkers, teachers and doctors, even though spanking is not defined as abuse and some states have gone so far as to specifically legislate the right of parents to spank their children.

"These social workers often have different philosophies than the parents of what's in the best interest of the child," said Dacus. "Lifestyle issues come into play. So you have a large portion of children being taken from parents by and put in a stranger's home perhaps with totally different values and social and ethical and sexual lifestyles than their parents," he said.

"We get a lot of everyday childhood injuries. We had a case where a father grabbed his 16-year-old daughter's arm from getting on a motorcycle," Moore said. "We've seen reports where the abuse is 'arguing in front of children."

"It can come down to the inappropriate, individualized judgement of a caseworker," said Cornell University's James Garbarino, who trains social workers and just published a new book, *Parents Under Siege*. "It is sometimes dangerous when they have this authority."

But those in the trenches say that evaluating cases based on a strict definition of abuse is almost impossible in a multicultural world where views on parenting differ wildly and families can be stricken with tremendously complex and infinite numbers of problems and issues.

"I think ... that this is an enormously complicated area of law and social practice where the question is between acceptable parental behavior and what constitutes endangering the welfare of a child," Spence said. "There is always a place where you make a decision on that boundary."

Massachusetts has very clear laws defining abuse and neglect, yet many cases still are judgment calls.

"In a huge, complex culture that is multicultural, there is no easy place to go to define [abuse]," Spence said. "I think the debate goes back and forth all the time and must go on and continue."

### **Thin, Gray Line**

Dennis Sklenar, a social worker at New York University Medical Center in New York City, has seen just about everything in his 23 years on the job. He still recalls vividly the afternoon 10 years ago when a father wheeled the corpse of his 4-year-old daughter he had beaten to death into the hospital lobby in her stroller.

But Sklenar also recalls with equal horror a case in which a family came close to being destroyed because their baby suffered from a rare medical condition that presented itself as classic signs of abuse.

Hospital social workers, emergency room doctors and pediatricians detect abuse by determining if parents' accounts of how the child sustained an injury match the injury, Sklenar said. There are injuries, like spiral fractures and certain head traumas, that cannot be explained away the way some bruises or burns can.

The infant the young couple brought into the hospital one Friday night had fluid collections on the brain, a head trauma the doctors could only explain as abuse-related. But the parents did not have a suspicious story or send out other warning signals, he said.

"Everyone was crazed that we had to report this," Sklenar recalls. "We kept saying, this family is going to be destroyed," he said.

The case was reported, and social workers went to the family home and strip-searched the couple's 19-month-old child looking for bruises or other signs of abuse. They found none. On Monday, a neurosurgeon found that the infant suffered from a congenital medical condition that produced the brain fluid.

"At that point, the damage was done. The family was traumatized and accused of abuse," Sklenar said.

Dr. Steven Kairys, professor of pediatrics at the Robert Wood Johnson Medical Center in New Brunswick, N.J., and director of the American Academy of Pediatrics, said even doctors and hospital social workers are wary of the child protective system these days.

"There is a fair amount of mistrust between the medical community and CPS," Kairys said. "Some doctors feel the system is too arbitrary with its decisions. They're not done in a way that fits the evidence," he said.

"Child welfare workers are asked by the public to exercise judgments that are more life-and-death judgments than any other public employee other than police officers," Spence said. They are asked to predict the future and to often enter dangerous situations, he said. "Mistakes are made both ways," he said.

In hospitals, a team of doctors and social workers consult with each other to round out an abuse evaluation, and Sklenar cautioned against social workers making abuse evaluations by themselves. But the cases reported from doctors at hospitals are usually clearer-cut cases of physical or sexual abuse or serious neglect, and only 2-3 percent of abuse reports come from doctors, Kairys said. Most are filed by teachers, neighbors and through anonymous tips, and most of these fall into cases of neglect that are much more difficult to determine.

It's these cases where kids are removed from homes for undefined "other abuses" that cause the problem.

Activists say a clear policy that prevents state and city services from taking kids out of their homes for reasons other than physical or sexual abuse or serious neglect would take the gray areas out of judgments while protecting families. If they say, reforms would actually help abused children by reducing social workers' caseloads, clearing the backlog docket of family courts, and allowing the system to focus on the children and families most in need.

Spence said state agencies are "moving rapidly" to initiate policies that recognize the importance of the biological family and that it is the state's responsibility to continually improve the system based on experience. But if public opinion is swaying toward family preservation and parental rights, a decade ago it was swinging hard against those priorities. "I said state agencies can't tailor their policies to public opinion."

"One of the things agencies struggle with is not to swing back and forth between these extremes," he said. "There is a critical responsibility to keep building and learning upon actual experience in case after case of what constitutes risk," he said.

However, the neat-and-tidy procedures and policies critics are looking for are not a realistic expectation.

"There are no easy rules. Life doesn't come in easily defined packages," he said.

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